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NYS EDUCATION DEPARTMENT
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OFFICE OF FACILITIES PLANNING

Dear Mr. Lavery:

Pursuant to our recent phone conversation regarding the access requirements of public schools, the following will serve as a summary of the legal requirements concerning access.

There are currently two laws governing accessibility requirements of buildings in New York State. The first is the New York State Fire Prevention and Building Code and the other is the Americans with Disabilities Act of 1990.

Both require that any new construction or alterations be accessible to and usable by, people with disabilities. In addition, both require that when alterations are made to an existing facility an accessible route must also be created (see 36 CFR Part 1191 subpart 4.3 et. seq., attached) to the maximum extent possible (However, there is a cap of 20% of the cost of the renovations on the creation of an accessible route).

The foregoing information is fairly basic, in that if you're doing new construction and/or alterations of an existing structure, you must make those portions accessible, and in the case of alterations, there must be an accessible route provided in order to access the renovated area.

The more complex question is, when is a public school required to retrofit an existing facility in order to achieve access?

Although the State building code contains no requirement to retrofit an existing structure to make it accessible (except in some limited cases), both Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 require that the services, programs and activities of government entities (ADA) and recipients of federal financial assistance (§504) be accessible to people with disabilities when viewed in their entirety.

The term "accessible" in this regard does not necessarily mean physical access, although that is certainly the goal. Recognizing that retrofitting existing structures may be expensive and/or difficult, the law provides an alternative to retrofitting, and allows access to be accomplished through auxiliary

means or methods, (e.g., The "art" room is on the second floor of a school with no elevator and a child who uses a wheelchair is enrolled in the class. The school district could elect to install an elevator in the building or could move the art class to the accessible first floor.) Keep in mind that "services, programs and activities" covers a lot of territory (e.g., if bathroom facilities are provided to able bodied individuals, this constitutes a service, program or activity and people with disabilities must have access to bathrooms). Likewise, if a school is conducting graduation ceremonies at the school they must be accessible to students and members of the public with disabilities. If the school or auditorium are inaccessible, then it should either be made accessible or the ceremonies should be moved to an accessible location.

The bottom line is that the laws are designed to provide "equal" access to all individuals regardless of disability.

Generally, in assessing the need for modifications, etc. I find it helpful to look at any given situation from the perspective of an able bodied individual versus an individual with a disability. The wider the gap to equal access, the more likely a service, program or activity will be found to be discriminatory.

In addition, there are some administrative requirements under the ADA that you should be aware of and that could be somewhat problematic. If the school district has more than 50 employees it was required to designate a responsible person, prior to 1/26/92, to coordinate compliance with the ADA and act as "point" person on ADA issues and the district must also have in place an ADA grievance procedure. In addition, there is a requirement that all entities covered by Title II have, in place, a self-evaluation plan by 1/26/93 (In this regard I have attached a chapter ~~on~~ program accessibility that you should find helpful).

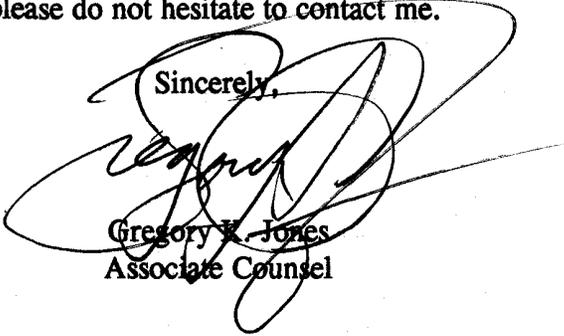
In general, this document should reflect how the entity is going ~~to~~ assure access to it's services, programs and activities. Entities with 50 or more employees should also have prepared a transition plan by July 26, 1992 setting forth those areas where structural changes are necessary to provide access to services, programs and activities (i.e., where access can not be provided through auxiliary means).

The transition plan can be a catch-22 for recipients of federal financial assistance in that these entities have been required to make their services, programs and activities accessible for the past 25 years. Thus if a school district, in its transition plan says that particular program requires structural changes in order to provide access, then, by implication, the entity is in violation of Section 504.

Structural changes required to provide access were to be completed by January 26, 1995.

I am enclosing some materials that I hope you will find helpful. If I can be of any further assistance to you in this regard, please do not hesitate to contact me.

Sincerely,


Gregory R. Jones
Associate Counsel